

Message

From: Robinson, Valois [Robinson.Valois@epa.gov]
Sent: 7/22/2020 12:45:47 PM
To: Minter, Douglas [Minter.Douglas@epa.gov]
Subject: FW: direct EJ comment language - Can we add a discussion about Kimi's EJ comment to the meeting this morning?

Hi Douglas,

During our DB Team Update meeting this morning, could we talk about the last EJ topic that needs to be resolved, per Kimi's emails below, please?

Thanks!

Ex. 5 AC/DP

(specific comments below)

Valois

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From: Matsumoto, Kimi <Matsumoto.Kimi@epa.gov>
Sent: Monday, July 13, 2020 7:37 AM
To: Minter, Douglas <Minter.Douglas@epa.gov>
Cc: Robinson, Valois <Robinson.Valois@epa.gov>; Chin, Lucita <Chin.Lucita@epa.gov>
Subject: direct comment language

Deliberative/attorney work product/attorney-client privileged

Hi Douglas –

Ex. 5 AC/AWP/DP

Thanks, Kimi

8148	Ex. 6 Personal Privacy (PP)	Individual	General tribal, EJ	Also, in its revised draft permits, the EPA acknowledges that the Lakota and other indigenous nations have important cultural, spiritual, and legal ties to the Black Hills. But then the EPA says it won't consider these issues in making its decisions. This is a clear violation of the requirement that these types of issues must be considered during the permitting process.
8268		Individual	EJ	<p>The EPA's draft environmental justice analysis raises important points related to the significance of the Black Hills as a sacred site and related to treaty obligations, but the EPA appears to separate these issues from their responsibility to protect underground sources of drinking water. As the EPA states, "The purpose of the UIC regulations is to prevent the movement of fluids containing contaminants into USDWs if the presence of those contaminants may cause a violation of a primary drinking water regulation or otherwise adversely affect human health." The EPA must consider potential adverse impacts to human health from a cultural perspective as well as from a technical/scientific perspective, and the EPA must remember that per Article 6 of the US Constitution, treaties remain the supreme law of the land. The EPA cannot separate scientific and technical questions from cultural and legal questions.</p> <p>Further, an environmental justice analysis must do more than just pay lip-service to an expanded study area. In particular, specific impacts to specific Indigenous communities are not considered. The Black Hills sits up-gradient and serves as a headwaters zone for watersheds to the east. In particular, Wakpa Waste, or the Cheyenne River, flows from the Dewey-Burdock area through the northwestern corner of the Pine Ridge Indian Reservation and serves as the southern boundary of the Cheyenne River Reservation before joining the Missouri River. At a bare minimum, specific impacts to Oglala Sioux Tribe and Cheyenne River Sioux Tribe lands and members must be considered in relation to this proposal, particularly in light of the prior contamination both reservations have experienced as a result of historic mining activities.</p>

8050 (10/5 Hot Springs hearing)	Ex. 6 Personal Privacy (PP)	Individual	NHPA, EJ Scope of CEA and other analyses, treaty rights, tribal consultation,	<p>My name is Ex. 6 Personal Privacy (PP) I have a bunch of things to say because I have a lot of concerns about the hundreds of pages of these draft permits.</p> <p>One important thing to say is that the EPA's requesting information on traditional cultural properties, on potential adverse effects to traditional cultural properties, per Section 106 of the National Historic Preservation Act.</p> <p>If that is true, then these draft permits should not have been issued prior to meaningful tribal consultation taking place, period. Period. So I can't believe that you're actually concerned about that because -- because that's the case.</p> <p>The second thing that is really concerning is that in these documents, you say that the Nuclear Regulatory Commission's review of cultural resources appears sufficient. The Atomic Safety Licensing Board disagrees with you. The D.C. District Court of Appeals disagrees with you. The NRC's analysis of cultural resources has been deemed illegal, and so it doesn't give me a lot of confidence in the EPA that your documentation doesn't reflect that.</p> <p>The third thing that I wanted to bring is that the EPA can't just consider impacts to underground sources of drinking water or effects to human health from a scientific perspective or from a legal perspective. You also ask for feedback on your environmental justice analysis, which I have a lot to say about, and I'll be providing written comments.</p> <p>But one of the things that I have concerns about is that the EPA is trying to say that treaties -- that we acknowledge that treaties exist, and that we acknowledge the Black Hills is a sacred site, but that those issues are separate from the scientific considerations of threats to underground sources of drinking water.</p> <p>There's a lot of things to say about that, but one thing is that that's illegal, that the EPA can't separate those things out. And there -- that's by your own law. So the last thing I want to do is just read out to you a few regulations under your own system of law that requires you to consider issues of treaty and issues related to culture and spiritual significance.</p> <p>The National Historic Preservation Act, Section 101(d)(6)(B) requires any federal agency, that includes the EPA, to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. That is this project.</p> <p>Executive Orders 13007 and 13175 require the federal government to honor treaty rights and avoid any action that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites. That also applies to this project, and the EPA is bound by those orders.</p> <p>Article Six of the U.S. Constitution says that treaties remain the supreme law of the land. The Supreme Court in 1980 ruled that the U.S. Government indeed violated the 1851 and 1868 Fort Laramie treaties and stole this land. I don't think any of those laws have asterisks behind</p>
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8050 (10/5 Hot Springs hearing)	Ex. 6 Personal Privacy (PP)	Individual	Water concerns, tribal consultation, EJ	<p>[...]</p> <p>Because our concern is, to drill and pull water from these aquifers, the Madison, Minnelusa, and then inject the wastewater into the Inyan Kara, that's insane. Anything that is a contaminant should not be brought out or put back into the ground.</p> <p>As a water administrator for the Water Resource Department, I have deep concerns because we're right downstream from the aquifers and the surface waters. All this mining and all this -- you know, all the pipelines, everything that's going on now is just -- it's just destroying our planet, destroying our Unci Maka.</p> <p>So my concern today is with these draft water permits. I know the State of South Dakota Water Management Board is waiting on you guys' decision, but I would like to see you look at our concerns from the environment.</p> <p>Because I know the Environmental Protection Agency, you're supposed to have a source water protection program, and I would like to see that implemented in these decisions.</p> <p>And you've got different parties involved in this. You've got the State of South Dakota, the federal. But what about our tribal input? That needs to be part of the decision-making process.</p> <p>So what our concerns are today, I would like to have considered and acted upon in this decision of these draft water permits. That's just my concern.</p> <p>And I know that our tribe is going to be looking with EPA for future consultation, too, so that's going to be scheduled. But just -- I just have concerns that our culture, our livelihood, our survival is in our water because water is sacred to us. Thank you.</p>
		Administrator, OST Water Resource Department		

Example of Speaking in Indigenous language:

8050 (10/5 Hot Springs hearing)	<div>Ex. 6 Personal Privacy (PP)</div>	Individual	EJ	(Speaking in indigenous language.) First of all, I want to explain myself, as a spiritual leader and for spiritual leaders on Pine Ridge Reservation, how important these elements are for us, the connections we make.
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